

## Message Text

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ORIGIN L-03

INFO OCT-01 IO-13 ISO-00 MCT-01 SY-05 CIAE-00 DODE-00  
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DRAFTED BY L/UNA:SBOND:CDJ  
APPROVED BY L:SMSCHWEBEL  
IO/UNP:RBARRY  
M/CT:HISHAM (DRAFT)  
S/AR:GHALDRICH  
L/PM:MJMATHESON

-----122526 222353Z /65

O R 222324Z FEB 78  
FM SECSTATE WASHDC  
TO USMISSION GENEVA IMMEDIATE  
INFO USMISSION USUN NEW YORK

C O N F I D E N T I A L STATE 046260

E.O. 11652:GDS

TAGS: UN, PINS

SUBJECT: AD HOC COMMITTEE ON TAKING OF HOSTAGES

REFS: (A) STATE 43363 (B) GENEVA 2360

1. DEPT HAS CONCLUDED, UPON FURTHER ANALYSIS, THAT  
COVERAGE OF GENEVA CONVENTIONS (GC) AND PROTOCOL IS  
NOT RESTRICTED IN MANNER SET FORTH IN PARA 1 OF REFTEL  
(A), BUT RATHER THAT CONVENTIONS CAN ALSO COVER ANY  
SITUATION WHERE PERSONS FIND THEMSELVES, IN THE CASE OF  
A CONFLICT, IN THE HANDS OF A PARTY TO THE CONFLICT OF  
WHICH THEY ARE NOT NATIONALS (SEE ARTICLE 4 OF GC).

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2. HOWEVER, THIS DOES NOT NEGATE APPROACH CONTAINED  
IN REFTEL (A). WE BELIEVE THAT PLO, FOR EXAMPLE, WILL  
NOT LIKELY EVER BECOME A "PARTY TO A CONFLICT" AND THERE-  
FORE BE COVERED UNDER THE GC, AS ARTICLE 96 OF THE  
PROTOCOL WOULD PERMIT IT TO BECOME IF IT UNDERTAKES TO  
APPLY THE GC AND THE PROTOCOL, BECAUSE PLO HAS NEVER  
COMPLIED WITH LAWS OF WAR, NOR MANIFESTED A DESIRE TO

DO SO. IT IS ALSO UNLIKELY THAT IT WOULD FILE A DECLARATION UNDER ARTICLE 96 OR, IF IT DID SO, THAT ISRAEL WOULD ACCEPT THE DECLARATION.

3. NEVERTHELESS THE STATE HAVING CONTROL OVER THE HOSTAGE-TAKERS COULD ACCEPT SUCH AN ARTICLE 96 DECLARATION, REGARDLESS OF ISRAEL'S ACTIONS. BY ACCEPTING THE DECLARATION, THE PLO WOULD BECOME A PARTY TO THE CONFLICT AND THUS THE HOSTAGE-TAKING WOULD FALL UNDER THE GC. IF DECLARATION NOT ACCEPTED, GC NOT APPLICABLE AND, IN PRINCIPLE, HOSTAGE-TAKING WOULD BE COVERED BY HOSTAGES CONVENTION.

4. WE CONTINUE TO BELIEVE THAT IT WOULD BE PREFERABLE TO STATE ANY EXCEPTION IN AS SPECIFIC TERMS AS POSSIBLE RATHER THAN IN GENERAL TERMS SUCH AS "RULES OF INTERNATIONAL LAW APPLYING TO ARMED CONFLICTS". WE WANT TO MAKE CLEAR THAT A STATE WITH CONTROL OVER HOSTAGE-TAKERS COULD NOT DETERMINE THAT PARTICULAR CASE FALLS UNDER SUCH RULES, BUT THAT HOSTAGE-TAKERS ARE NOT AGENTS OF "PARTIES TO THE CONFLICT" IN THE NARROW MEANING OF THE GC, AND THEREFORE THAT THERE ARE NO EFFECTIVE OBLIGATIONS UNDER GC.

5. ACCORDINGLY, USDEL IS AUTHORIZED TO SEEK ADHERENCE TO FORMULATION ALONG LINES OF THE FOLLOWING: "THE OBLIGATIONS OF THIS CONVENTION SHALL NOT APPLY WHERE THE TAKING OF HOSTAGES IS AN ACT COMMITTED IN THE COURSE OF ARMED CONFLICTS (INCLUDING THOSE IN WHICH PEOPLES ARE FIGHTING AGAINST COLONIAL DOMINATION AND FOREIGN OCCUPATION AND AGAINST RACIST REGIMES IN THE EXERCISE OF THE RIGHT OF PEOPLES TO SELF-DETERMINATION IN ACCORDANCE WITH THE CHARTER OF THE UNITED NATIONS), WHERE, IN THE VIEW OF THE STATE HAVING CONTROL OVER THE HOSTAGE-TAKERS, THEIR ACTIONS ARE THOSE OF A PARTY TO THE CONFLICT UNDER THE GENEVA CONVENTIONS OR THE PROTOCOLS THERETO." THE LANGUAGE IN PARENTHESES IN FOREGOING FORMULATION IS FROM THE PROTOCOL AND OBVIOUSLY IS LANGUAGE WE WOULD PREFER TO HAVE OMITTED.

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TIONS OF THIS CONVENTION SHALL NOT APPLY WHERE THE TAKING OF HOSTAGES IS AN ACT COMMITTED IN THE COURSE OF ARMED CONFLICTS (INCLUDING THOSE IN WHICH PEOPLES ARE FIGHTING AGAINST COLONIAL DOMINATION AND FOREIGN OCCUPATION AND AGAINST RACIST REGIMES IN THE EXERCISE OF THE RIGHT OF PEOPLES TO SELF-DETERMINATION IN ACCORDANCE WITH THE CHARTER OF THE UNITED NATIONS), WHERE, IN THE VIEW OF THE STATE HAVING CONTROL OVER THE HOSTAGE-TAKERS, THEIR ACTIONS ARE THOSE OF A PARTY TO THE CONFLICT UNDER THE GENEVA CONVENTIONS OR THE PROTOCOLS THERETO." THE LANGUAGE IN PARENTHESES IN FOREGOING FORMULATION IS FROM THE PROTOCOL AND OBVIOUSLY IS LANGUAGE WE WOULD PREFER TO HAVE OMITTED.

6. WE COULD EQUALLY ACCEPT ALTERNATIVE LANGUAGE RECOUNTED IN ROSENSTOCK/BOND TELECON FEB. 21: "THE PROVISIONS OF THE PRESENT CONVENTION DO NOT APPLY TO ACTS COMMITTED IN THE COURSE OF INTERNATIONAL ARMED CONFLICT COVERED BY THE GENEVA CONVENTIONS OF 1949 OR ADDITIONAL PROTOCOL I INCLUDING SITUATIONS SET FORTH IN ARTICLE 1, PARAGRAPH 4 (NLM LANGUAGE FROM ARTICLE 1, PARA 4) OF ADDITIONAL PROTOCOL I AND TO WHICH THOSE INSTRUMENTS ARE

APPLICABLE."

7. IF PROVISIONNS SUCH AS THE FOREGOING WERE TO BE

INCLUDED, IT WOULD BE THE MORE DESIRABLE FOR PREAMBULAR  
OR OTHER OPERATIVE LANGUAGE TO EXPRESSLY AND SWEEPINGLY  
CONDEMN HOSTAGE-TAKING, IN TERMS, E.G., SUCH AS:

"HAVING REGARD TO THE VIOLATION OF FUNDAMENTAL HUMAN  
RIGHTS WHICH THE TAKING OF HOSTAGES ENTAILS AND THE  
PRESSING NEED FOR HOSTAGE-TAKING TO BE EFFECTIVELY  
PROSCRIBED IN TIME OF PEACE AS IN TIME OF WAR;"

AND "HAVING REGARD TO THE CATEGORIC PROHIBITION OF THE  
TAKING OF HOSTAGES IN THE COURSE OF HOSTILITIES WHICH  
IS CODIFIED IN THE GENEVA CONVENTIONS". VANCE

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## Message Attributes

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**Decaption Date:** 01 jan 1960  
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**Review Markings:**  
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